



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,679	03/31/2004	Roy L. Hood	713629.167	8311

27128 7590 06/24/2005

BLACKWELL SANDERS PEPER MARTIN LLP
720 OLIVE STREET
SUITE 2400
ST. LOUIS, MO 63101

EXAMINER

PIERCE, JEREMY R

ART UNIT	PAPER NUMBER
----------	--------------

1771

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/814,679

Applicant(s)

HOOD ET AL.

Examiner

Jeremy R. Pierce

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-46 is/are pending in the application.
- 4a) Of the above claim(s) 16-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-15 and 34-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed on April 27, 2005 has been entered. Claims 1, 3, 4, 9-12, 34, 36, 37, and 41-44 have been amended. Claims 1-5 and 7-46 are currently pending with claims 16-33 withdrawn from consideration. The amendment is sufficient to overcome the 35 USC 112 rejections set forth in sections 3 and 5 of the last Office Action because the new matter has been eliminated and the claim language is no longer indefinite.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 3, 5, 7, 8, 10-12, 15, 34-40, and 42-44 are rejected under 35 U.S.C. 102(e) as being anticipated by Sallee (U.S. Patent No. 5,976,643).

Sallee discloses a base sheet material with a plurality of garnishes projecting therefrom (Figure 1). The garnishes meet the claimed projecting

Art Unit: 1771

element limitations because the polymer of the terminal part would also be present in the core of the base section, which is made from a different polymer (see Figures 5-7). With regard to claims 3 and 11, the base sheet must contain at least one pigment that is different from one of the projecting elements since the base sheet is formed of multiple colors (column 4, line 1). With regard to claim 5, the retaining ring is preferably Derlin (column 6, line 21), which is a thermoplastic acetal. With regard to claim 7, various colors are used to create a camouflaged appearance (column 5, lines 20-21). With regard to claim 8, the garnish is made from polyethylene (column 3, line 60). With regard to claim 10, the base sheet has holes (Figure 1). With regard to claim 12, the base material is also camouflaged (column 4, line 1). With regard to claim 15, a plurality of projecting elements is present (Figure 1).

With regard to claims 34 and 35, the garnishes would comprise at least a first plurality of projecting elements and a second plurality of projecting elements because each set may be colored differently to effect a camouflaged pattern (column 5, lines 11-21). With regard to claims 36, 37, 43, and 44, the base sheet must contain at least one pigment that is different from one of the projecting elements since the base sheet is formed of multiple colors (column 4, line 1). With regard to claims 38 and 40, Sallee discloses the garnishes are made from polyethylene (column 3, line 60).

4. Claims 1, 9, 10, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Zuiddam et al. (U.S. Patent No. 4,866,808).

Art Unit: 1771

Zuiddam et al. disclose floor mat comprising a plurality of U-shaped plastic profiles (Abstract). The terminal parts that differ from the base section in Zuiddam et al. would be the bristles that come out of the center of the U-shaped projections (Figure 1). The bristles would comprise the claimed first polymer and the U-shaped projections would comprise the claimed second polymer. With regard to claim 9, a slip-resistant sheet is provided (column 4, lines 20-24). With regard to claim 10, there are open surfaces (Figure 2). With regard to claim 15, a plurality of projecting elements is present (Figure 1).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sallee.

With regard to claims 2 and 4, Sallee does not disclose what color the retaining collar, which comprises the claimed wall of the projecting element, might be. Sallee does disclose that the material is multi-colored though (column 5, lines 11-21). It would have been obvious to a person having ordinary skill in the art to use two distinct pigments for the retaining collar and the tufts, since the tufts form a camouflaged pattern and making retaining rings with the exact same

Art Unit: 1771

color for each tuft would create an unnecessary and great expense because the retaining rings are not disclosed as contributing to the camouflaged pattern.

7. Claims 9 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sallee in view of Nesbitt (U.S. Patent No. 5,549,938).

Sallee does not disclose the use of a slip resistant sheet. Nesbitt teaches that a camouflage material can be backed by a magnetic sheet, which allows the material to be securely fastened to a vehicle without slipping (Abstract). It would have been obvious to a person having ordinary skill in the art at the time of the invention to provide a slip resistant sheet to Sallee in order to allow the camouflage material to be fastened to a vehicle, as taught by Nesbitt.

8. Claims 13 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sallee in view of Rawlinson (U.S. Patent No. 4,329,196).

Sallee does not disclose what density the polyethylene material should be. Rawlinson teaches that grass-like material made from polyethylene should have a density between 0.90 and 0.93 (column 3, lines 8-10). It would have been obvious to a person having ordinary skill in the art at the time of the invention to use a polyethylene with a density between 0.915 and 0.92 in the garnish of Sallee, since such range is embraced by the art as being known and it has been held to be held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

9. Claims 14 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sallee in view of Sesselmann (U.S. Patent No. 5,790,987).

Art Unit: 1771

Sallee teaches the material may be used on a person (Abstract), but does not disclose the use of filler. Sesselmann teaches that alumina may be added to camouflage material to help reduce odor (column 2, lines 5-27). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include alumina in the material of Sallee in order to reduce odor, as taught by Sesselmann.

Response to Arguments

10. Applicant's arguments filed April 27, 2005 have been fully considered but they are not persuasive.

11. Applicant argues that Sallee recites a plurality of garnishes each individually anchored to a base rather than a unitary, molded structure. However, recitation that the structure is "unitary" does not preclude the material of Sallee. The garnishes of Sallee are bonded to the planar base with adhesive, thus forming a singular unit of material. The Examiner considers this structure unitary. The recitation in the claims that the article is molded refers to a processing limitation, but does not denote any definite structure to the material in the product claim.

12. Applicant argues that Zuiddam teaches a floor mat where the filaments are attached with a wire, but not a unitary molded article. However, the article of Zuiddam is a single unit, so it is unitary. The recitation in the claims that the article is molded refers to a processing limitation, but does not denote any definite structure to the material in the product claim.

Art Unit: 1771

13. Applicant argues that claims 2 and 4 cannot be rejected under Section 103(a) because claim 1 is not rejected under Section 103(a) and if an independent claim is nonobvious, then any claim depending therefrom is nonobvious. Applicant then makes a similar argument regarding the other dependent claims rejected under Section 103(a). However, claim 1 is rejected under Section 102(e) as being anticipated by Sallee. Anticipation is the epitome of nonobviousness. Therefore, rejection of the dependent claims under Section 103(a) is appropriate as set forth above in the rejection.

14. Applicant argues claims 2 and 4 are not obvious over Sallee because there is no motivation for someone skilled in the art to use distinct pigments since that person will not arrive at the Applicant's Invention. This argument is flawed because it amounts to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

15. In response to applicant's argument that the examiner's conclusion of obviousness in combining Sallee and Nesbitt and combining Sallee and Rawlinson is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Art Unit: 1771

16. Applicant argues that there is no motivation to combine Sallee with Sesselmann. However, both Sallee and Sesselmann disclose camouflage materials that may be used on a person. Sesselmann teaches an improvement in reducing odor that would be obvious for a person of ordinary skill to use in Sallee, as set forth above in the rejection.

Conclusion

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

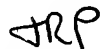
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (571) 272-1479. The examiner can normally be reached on normal business hours, but works flextime hours.

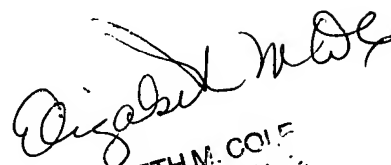
Art Unit: 1771

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeremy R. Pierce
June 20, 2005



ELIZABETH M. COLE
PRIMARY EXAMINER